



## Significant Restrictions on the Tax Deductibility of Expenses; Article 21 of Law 4321/2015

### Important Notes:

- (1) In case the above Law is implemented, this will obviously be clearly a negative development for Greek clients, who will need to change their corporate structures immediately.
- (2) It is anticipated that the Greek Ministry of Finance will issue soon, a detailed circular with guidelines and instructions for the criteria and how will implement the new Law.
- (3) Upon the issuance of the circular we will contact you again, in order to advise more specifically. Here, we would like to inform you that the Scientific Committee of the Greek Parliament (and we fully agree with their position), has questioned and expressed serious doubts on the level of compatibility of the new rule EU legislation and International Tax Treaties with other countries. Furthermore, a number of questions arise in relation to the practical implementation of the rule and its interaction with other provisions of the Greek Income Tax Code (e.g. transfer pricing legislation). Therefore, we have to wait for the issuance of the circular in order to see and understand how this rule will work and be implemented in practice.
- (4) So, in the meantime, we are remain standby for the next developments.....

**Proposed Solution, as it has been for some time, in any case: Malta/UAE structures**

**...As we pointed out many times in the past the use of Malta structures** with adequate substance (using a UAE Holding Company to hold the shares of the Maltese entity and perhaps a UAE trading company so profits are accumulated outside the EU with bank confidentiality and safety) is the only viable way to avoid complications with such laws. **Malta is not considered as privileged tax regime OR non cooperative in Greece or any other EU country so it is a solution.** This is the reason we opened our office in Malta in 2010 which is now a fully Regulated and Licensed Practice by the Malta Financial Services Authority that can provide you with 100% of the services required to set up and operate Maltese entities.

For further details and explanations you can contact [Vasilis Christophorou](#).



Finally and in addition to all the above points please find below a memo from our Legal Advisors in Athens, a very big and influential local law firm, regarding the specific issue.

« On 21 March 2015 a new rule entered into force, heavily restricting the tax deductibility of expenses incurred by Greek enterprises. According to earlier Government announcements, the key objective of the new rule was to counter tax avoidance in relation to transactions with preferential tax regimes and non-cooperative jurisdictions, with a particular focus on triangular structures (i.e. structures whereby there is a distinction between the entity delivering the goods and the entity invoicing the respective supply). However, the provision that has just been ratified by the Greek Parliament is wider in scope.

The new provision (i) introduces a restriction on the tax deductibility of an extensive scope of payments (ii) imposes a preliminary obligation to pay 26% tax on the value of such payments under certain circumstances and (iii) shifts the burden of proof to the taxpayer, in relation to the substance of relevant transactions.

The new provision applies in relation to payments made to:

- Entities established in non-cooperative jurisdictions (i.e. blacklisted states).
- Entities established in preferential tax regimes (a number of EU member states fall within the definition of preferential tax regimes, as set out in the Greek Income Tax Code and relevant Ministerial Guidelines, including Cyprus, Ireland and Bulgaria).
- Associated enterprises, in the event that the Greek paying enterprise has not complied with applicable transfer pricing documentation requirements in relation to the specific transaction.
- Entities that do not have the appropriate resources, either at their premises or at the level of the group, in order to perform similar type of transactions.

The level of compatibility of the new rule with EU legislation and international tax treaties is highly questionable. This has also been commented upon by the Scientific Committee of the Greek Parliament. Furthermore, a number of questions arise in relation to the practical implementation of the rule and its interaction with other provisions of the Greek Income Tax Code (e.g. transfer pricing legislation).

It is anticipated that the Greek Ministry of Finance will soon provide detailed guidelines for the implementation of the new rule and may potentially refine its scope of application, taking also into consideration the comments of the Scientific Committee and the significant market reactions».